

IN THE COURT OF APPEALS OF IOWA

No. 09-004 / 08-1934
Filed January 22, 2009

IN THE INTEREST OF R.A.S., Minor Child,

R.A.S., Father,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephan C. Gerard, II, District Associate Judge.

A father appeals from the juvenile court's denial of his motion to dismiss the child in need of assistance proceedings and his motion to modify prior dispositional orders. **REVERSED AND REMANDED.**

Natalie H. Cronk of Law Office of Natalie H. Cronk, Iowa City, for appellant-father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant County Attorney, for appellee-State.

John Daufeldt of Daufeldt Law Firm, P.L.C., Conroy, for appellee-mother.

Ellen Ramsey-Kacena, Cedar Rapids, guardian ad litem for minor child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

A father appeals from the juvenile court's denial of his motion to dismiss the child in need of assistance (CINA) proceedings and his motion to modify prior dispositional orders. He contends the court erred in denying both motions because he poses no risk to his child's health or safety. He also contends the court erred in failing to hold an evidentiary hearing on the motions. Finally, he contends placement of the child with the mother is not in the child's best interest. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

R.S.'s parents divorced in March 2007, just before he turned three years of age. The dissolution decree granted the joint legal custody of R.S., with the father being granted physical care. In September of 2007, the father was arrested for domestic assault and criminal mischief following a fight with his live-in girlfriend. In October 2007, a founded report of child abuse was made against the father for the domestic violence and an unexplained broken bone to another of the father's children.

A CINA petition was filed in November 2007, alleging R.S. was a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (2007). The father consented to R.S.'s adjudication as CINA based upon allegations of neglect, pursuant to section 232.2(6)(c)(2). The court then placed custody of R.S. with his paternal grandmother.

Following a disposition hearing in February 2008, the court ordered physical care of R.S. transferred to the mother. It set the case permanency goal as reunification of R.S. with his mother. R.S.'s placement with his mother was continued following reviews in May and August of 2008.

On November 12, 2008, the father filed a motion to dismiss the CINA adjudication and a request to modify prior dispositional orders. The matters came before the court at the November 2008 review hearing. The father requested an evidentiary hearing be held on the motions. The court denied the hearing because it was "not modifying anything." Iowa Code section 232.103(3) states in pertinent part, "A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate or modify an order may be waived upon agreement by all parties." Because there was no waiver, the court erred in failing to hold a hearing to allow the presentation of evidence.

We further note that in denying the father's motions, the court stated:

[W]e can argue about the technical aspects of whether the child is safe or not safe. The overriding goal is the best interests of the child; and at this point in time, I continue to find from all of the evidence, including the most recently completed psychiatric evaluation, which I believe supports my position completely, placement of this child continuing to be with his mother.

However, the court may modify or terminate a dispositional order and release the child where "[t]he purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment." Iowa Code § 232.103(4)(a). The court failed to apply the correct standard in considering the father's motions.

We reverse the court's order denying the father's motions and remand the case for an evidentiary hearing on the matter.

REVERSED AND REMANDED.